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17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA

19 20 JOHN ARMSTRONG, et al.,
21 Plaintiffs,
22 v.
23 GAVIN NEWSOM, et al.,
24 Defendants.

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and the California Department of Corrections
and Rehabilitation

26 Case No. C94 2307 CW

27 **JOINT CASE STATUS STATEMENT**

28 Judge: Hon. Claudia Wilken

The parties submit this Joint Case Status Statement pursuant to the Stipulation and Order entered March 28, 2011 (ECF No. 1868), which provides that “[t]he parties will file periodic joint statements describing the status of the litigation” every other month, beginning on May 16, 2011.

CURRENT ISSUES¹

A. Effect of the COVID-19 Pandemic on the *Armstrong* Class

1. Plaintiffs' Statement

8 COVID-19 continues to spread throughout California prisons. To date, 88,725
9 cases of the novel coronavirus have been detected among people incarcerated in California
10 prisons. A total of 260 people have died after being infected while in prison in California.
11 Of those, approximately half were *Armstrong* class members, even though they make up
12 only about 12% of the total incarcerated population.

13 The pandemic continues to impact the transfer of *Armstrong* class members to ADA
14 accessible placements. Defendants have unfortunately been unable to find a way to
15 address the backlog of class members housed inaccessibly in prisons not designed to safely
16 accommodate their disabilities, even after COVID-19-related movement restrictions were
17 relaxed in April 2022. As of January 13, 2023, there are 94 class members housed
18 inaccessibly in placements not designated to accommodate their disabilities in violation of
19 the *Armstrong* Remedial Plan (this does not include an additional approximately 162 class
20 members with impacting placement codes awaiting transfer, as of December 23, 2022, to
21 designated mainline prisons from reception centers.)

22 On August 11, 2022, the parties met with the Court Expert regarding expedited
23 transfers. Defendants reported that the continuing delays are due to a combination of the
24 lack of available lower bunk, lower tier beds as well as COVID-19 outbreaks at either the
25 sending or receiving prisons. As Defendants acknowledge, however, their current efforts
26 are not going to be enough to bring the number of inaccessibly housed class members

²⁷ 1 Statements are joint unless otherwise delineated as either *Plaintiffs' Statement* or
28 *Defendants' Statement.*

1 down to anywhere near pre-pandemic levels, due to the ongoing need for CDCR to employ
 2 COVID-19-related risk reduction measures. Plaintiffs are committed to working with
 3 Defendants on solutions to prevent the creation of the “new normal”.

4 On September 16, 2022, Defendants stated that they are in the process of auditing
 5 the amount of set-aside quarantine and isolation space at each prison in response to
 6 identifying prisons that had set aside more quarantine and isolation space than is required
 7 by the *Plata* Receiver. Addressing this issue should open up additional accessible beds.
 8 Plaintiffs urge Defendants to consider any other ways that more accessible beds can be
 9 made available at prisons designated to house class members with disabilities impacting
 10 their housing placement.

11 Plaintiffs’ counsel are also concerned that the data on expedited transfers may not
 12 tell the whole story. Some class members report that, as a result of pandemic related
 13 transfer delays, they are housed in accessible placements, but on higher security level
 14 prison yards. These class members are not counted in data currently produced by
 15 Defendants because they are housed in ADA accessible housing placements, just
 16 reportedly at higher security levels than they should be because of their disabilities.
 17 Plaintiffs have requested to meet with Defendants in order to gather more information
 18 about whether class members are being overridden to housing placements that are not
 19 consistent with their security level and, if so, the scope of this issue.

20 **2. Defendants’ Statement**

21 Defendants continue to make significant and comprehensive efforts to contain and
 22 minimize the effects of an unparalleled, global pandemic on the people housed in its
 23 institutions, staff, and visitors by continuing with a robust vaccination process, maintaining
 24 a stringent testing process, enforcing appropriate mitigation measures, working with
 25 Plaintiffs to address individual concerns, and many other proactive efforts to address an
 26 unprecedented, challenging, and ever-changing landscape. Defendants’ efforts to provide
 27 safe and accessible housing and to provide detailed daily or weekly reports to Plaintiffs
 28 during this global pandemic have been memorialized in previous Joint Case Status

1 Statements. *See, e.g.*, ECF Nos. 3369, 3391, 3412. Moreover, for more than two years,
 2 CDCR has provided to the public detailed tracking information concerning COVID-19 to
 3 include active cases, resolved cases, deaths, vaccination rates of inmate and staff
 4 populations, tests completed, and other important information.² Recent data shows that
 5 80% of all inmates and 72% of staff members are fully vaccinated. Defendants' efforts
 6 continue to control the mortality rate amongst the incarcerated population. Deaths peaked
 7 nearly two years ago with 65 deaths in January 2021 and have dramatically decreased
 8 thereafter. There were 10 deaths in 2022. Most class members who died from severe
 9 COVID, unfortunately, had other recognized high-risk factors for severe COVID, such as
 10 obesity or other chronic conditions.

11 Defendants continue to prioritize the reduction of the number of non-reception-
 12 center class members on the expedited transfer list, notwithstanding unavoidable obstacles
 13 to do so that have arisen as a result of the global pandemic, as detailed in previously filed
 14 Joint Case Status Statements. *See, e.g.*, ECF Nos. 3369, 3391, 3412. As of January 13,
 15 2023, there are 94 non-reception center class members on this list which includes class
 16 members in medical beds controlled by Healthcare Placement Oversight Program
 17 (HCPOP). The updated COVID-19 Screening and Testing Matrix for Patient Movement
 18 relaxes many of the movement restrictions and should further facilitate the reduction of
 19 class members on the expedited transfer list. An audit of institutions' isolation-quarantine
 20 space to return space no longer required for isolation-quarantine to regular housing is also
 21 ongoing and will help address the limited number of lower bunk, lower tier beds. These
 22 efforts should also address Plaintiffs' concern that class members may be temporarily
 23 assigned higher-classification housing. CDCR continues to monitor and report
 24 requirements for all class members housed in non-designated spaces and provide timely
 25 documentation to Plaintiffs and the Court Expert. Defendants will continue to meet with
 26 Plaintiffs to share additional information and garner their input to resolve this issue.

27 ² See <https://www.cdcr.ca.gov/covid19/population-status-tracking/> for updated
 28 information.

1 **B. Allegations of Abuse, Retaliation, and Violence by CDCR Staff Against Class
2 Members**

3 **1. Plaintiffs' Statement**

4 **a. RJD and Five Prisons Orders**

5 In response to evidence of widespread abuse, assaults and retaliation against
6 incarcerated people on the basis of their disabilities who request accommodations and face
7 discrimination, on September 8, 2020, the Court issued orders finding remedial efforts
8 were necessary in order to “prevent further violations of the ARP and class members’
9 ADA rights at RJD.” ECF No. 3059 at 42. On March 11, 2021, the Court issued further
10 orders finding remedial efforts were necessary to prevent ongoing violations of the ADA
11 and ARP at five additional prisons. *See* ECF Nos. 3217 and 3218.

12 After over a year of negotiations, the parties reached agreement on the vast majority
13 of provisions included in Defendants’ RJD and Five Prisons Remedial Plans (“Plans”).
14 ECF No. 3336. Updated versions of the Plans were filed on March 23, 2022. *See* ECF
15 No. 3393, Exs. A, B.

16 Following a year of negotiations, the changes to the staff misconduct complaint
17 process were incorporated in to new regulations, and the Notice of Change to Regulations,
18 22-06, was published on April 8, 2022. On August 11, 2022, Plaintiffs’ counsel received
19 written notice that Defendants unilaterally decided that changes to the proposed
20 regulations stemming from the negotiations were necessary. The parties have not yet
21 resolved how Defendants will address Plaintiffs’ concerns as articulated in Exhibit A to the
22 prior Joint Case Management Statement (ECF No. 3430) and the Court Expert’s Quarterly
23 Report on Investigations and Discipline (ECF No. 3433 at 4-5).

24 Plaintiffs have consistently raised concerns that the number of complaints routed
25 through the new staff misconduct process will exceed the volume anticipated by CDCR.
26 Plaintiffs’ counsel remains concerned that Defendants have not adequately allocated
27 enough resources to meet the demand for complaints, despite Plaintiffs’ advocacy. To
28 address the shortfall, Defendants proposed reducing the number of complaints that would

1 be routed to OIA by increasing the threshold to require a “causal connection” between any
 2 alleged harassment, discrimination or retaliation and the protected class. OIA workload
 3 would be reduced because complaints lacking a causal connection would remain at the
 4 prison for local investigation and would not be routed to OIA. Plaintiffs objected to
 5 Defendants’ use of the “causal connection” standard because it is difficult to administer
 6 and is reminiscent of Defendants’ prior reasonable belief standard which, due to similar
 7 difficulties, the parties sought to eliminate in reforming the staff complaint process. The
 8 Court Expert shared some of Plaintiffs’ concerns, including that Defendants’ proposed
 9 screening standards would be difficult to apply consistently and objectively. ECF No.
 10 3433 at 2-3. In response, Defendants have implemented “causal connection” standard only
 11 at prisons not currently covered by *Armstrong* order. Implementation of Defendants’ two-
 12 tiered approach defies common sense. Having different standards apply to the same
 13 conduct committed by different staff in the system undermines the entire concept of
 14 accountability as enshrined in prior orders in this case. Further, having differing and
 15 difficult-to-administer standards for processing staff misconduct complaints will impact
 16 the processing of all staff complaints process and impede the court-ordered remedies.

17 Despite assurances from Defendants that they have not yet experienced staffing
 18 shortfalls under the new system, data produced by Defendants on December 8, 2022 shows
 19 that over half of the investigations in June 2022 – the most current month of data reflecting
 20 cases that should have closed – were not completed timely per remedial plan requirements.

21 Defendants have also begun quarterly production of documents in compliance with
 22 the Court’s Orders. Plaintiffs have produced multiple reports identifying ongoing failures
 23 to hold staff accountable for misconduct. Defendants produced a response on December 8,
 24 2022, disputing nearly all criticism made by Plaintiffs’ counsel regarding the investigation
 25 and discipline system. As outlined in a December 13, 2022 reply, Defendants failed to
 26 present reasoned arguments for why Plaintiffs’ criticisms are inaccurate and, in some
 27 cases, Defendants misrepresented the facts. Plaintiffs are becoming increasingly
 28 concerned that it will be impossible to work together to resolve problems if Defendants

1 remain unwilling to acknowledge that problems exist. Plaintiffs are continuing to work
 2 with Defendants regarding problems in the production of documents required pursuant to
 3 the court orders.

4 In November 2021, the Court ordered the Court Expert to investigate the treatment
 5 of people with disabilities at SATF. ECF No. 3338. The Court Expert conducted a year-
 6 long investigation and issued his report and recommendations on December 20, 2022.
 7 ECF No. 3446. He found that people with disabilities at SATF are “living diminished and
 8 needlessly difficult lives,” and as a result “face harsher prison conditions, and thus greater
 9 punishment, than their peers.” *Id.* at 4. People were denied accommodations needed to
 10 safely and independently perform a wide array of activities, including to eat, perform
 11 bodily functions, write, and participate in rehabilitative programs. The Court has set a
 12 briefing schedule for the parties to respond to the Court Expert’s report. ECF No. 3448.

13 We note that the Court Expert found that “it was not management that identified
 14 these problems; it was Plaintiffs’ counsel.”³ *Id.* at 5. Plaintiffs agree with the Court
 15 Expert that “much at SATF has to change” and that “SATF has not demonstrated that it is

16
 17 ³ See, e.g., ECF No. 3446 at 14 (“Person C, who is blind in one eye and has glaucoma in
 18 the other, was denied a tapping cane for six months despite filing 7362s, an 1824, and a
 19 602HC, and despite a request by Plaintiffs’ counsel.”); *id.* at 23 (“Person B experienced
 20 two separate ten-day or longer periods of receiving little to no nutrition after arriving at
 21 SATF, and during his second transfer, he had to go cold turkey off of an anti-depressant,
 22 which was not restored for nearly a month and only after intervention by the Court
 23 Expert’s team, CCHCS, and Plaintiffs’ counsel.”); *id.* at 35 (“It is difficult to understand
 24 why SATF healthcare leadership resolved this issue [related to availability of pull-up
 25 diapers] only after Plaintiffs’ counsel raised it and had engaged in advocacy about the issue
 26 for over a year.”); *id.* at 40 (“Understanding that he could not get CART at SATF, Person
 27 E told us that he gave up attempting to participate in self-help groups or other classes. He
 28 had previously attempted to attend religious services and a group class for veterans, but he
 could not understand anything, and he stopped attending. He did not see a point in filing an
 1824 to try to gain access to these programs, since his previous requests and the requests of
 Plaintiffs’ counsel had been rejected.”); *id.* at 45 (“Thus, after nearly three years of
 advocating for himself, several advocacy letters from Plaintiffs’ counsel, a response from
 OLA, a rejection from the Office of Appeals, numerous 7362s, several 1824s and RAP
 responses, several 602s, and an order from a provider, Person F still had not received the
 assistive device to help him hold a pen.”).

1 able to self-monitor and self-correct in the manner that would justify a lesser level of
 2 scrutiny by the Court and other outside monitors. Self-correction has to be the goal, and
 3 our investigation showed it is a long way off.” *Id.* at 5-6. Plaintiffs are committed to
 4 working with the Court Expert and Defendants to develop complete, durable solutions to
 5 the many problems at SATF. This process will not be easy or quick, and it will require
 6 sustained dedication and strong leadership across program areas at the institution, regional,
 7 and headquarters levels.

8 CDCR is a statewide system. Plaintiffs assert that violations of the ADA and ARP
 9 found thus far at six prisons exist system-wide. Plaintiffs are especially concerned about
 10 ongoing reports of staff misconduct from vulnerable class members in light of
 11 confirmation that CDCR has identified dozens of potential victims of sexual misconduct
 12 by one officer who worked for over a decade at CCWF.

13 (<https://www.cdcr.ca.gov/news/2022/12/28/cdcr-refers-internal-investigation-into-former-correctional-officer-to-district-attorney-for-charges-of-sexual-misconduct-of-incarcerated-women/>). Plaintiffs have requested information from Defendants regarding how many
 14 complaints were received against this officer and what protections are in place in the
 15 development of their early warning system to guard against such widespread abuse by one
 16 officer. Plaintiffs are committed to bringing such evidence before the Court until all class
 17 members are protected.

20 **b. False, Retaliatory and Discriminatory RVRs**

21 Despite significant progress made towards court-ordered improvements to the staff
 22 misconduct investigation and disciplinary system, Defendants have failed to address the
 23 endemic use of false and retaliatory RVRs by staff to cover up disability-related
 24 misconduct and/or to retaliate against class members who report misconduct. *See* ECF
 25 No. 3296 at 9. The same biased review that plagues the staff inquiry and investigation
 26 processes also denies class members due process in disciplinary hearings, resulting in
 27 longer terms of imprisonment, denials of privileges, housing at higher classification levels,
 28 and an unwillingness to report future misconduct or request disability-related help.

1 As in the staff complaint context, reviewers discount or ignore the testimony of
 2 incarcerated people during disciplinary hearings. *See* ECF No. 3322, Ex. A. Reviewers
 3 fail to discover evidence that staff have issued reports that appear plagiarized or otherwise
 4 replicate conduct and charges that are improbably attributed to multiple people at the same
 5 time. ECF No. 3296 at Ex. C. Reviewers also fail to identify cases where the conduct
 6 charged is the result of staff failing to accommodate someone's disability. ECF No. 3322
 7 at 11-12 & Ex. E.

8 Plaintiffs' counsel continues to identify class members who have received false,
 9 retaliatory, discriminatory or otherwise inappropriate RVRs. The use of RVRs to retaliate
 10 against and discourage the filing of staff misconduct complaints will persist unless
 11 Defendants take action to identify and root out problems through meaningful reforms to
 12 the RVR process.

13 Defendants have agreed to multiple changes, but Plaintiffs continue to raise
 14 outstanding problems. Defendants are in the process of revising the Chief Disciplinary
 15 Officer training to include the requirements for reviewing camera evidence, reviewing
 16 cases for bias, and the obligation to report staff misconduct when it is evident in the
 17 disciplinary process. To the extent feasible, Defendants agree to record audio for serious
 18 RVR hearings. According to Defendants, the recordings will be used for internal audits
 19 and will be available for review during investigations into allegations of
 20 false/discriminatory RVRs. The recordings will otherwise not be available to incarcerated
 21 people.

22 Defendants have also agreed to implement a headquarters-level audit of RVRs at 10
 23 prisons, beginning in October of 2022. Their draft audit plan includes, among other issues,
 24 identification of discrimination, retaliation, and bias in the RVR process.

25 Defendants have agreed to evaluate whether to include "red flags" in their EWS to
 26 identify when a staff member has initiated a disproportionate number of RVRs, when an
 27 incarcerated person has received a disproportionate number of RVRs, and instances when
 28 an incarcerated person receives an RVR within a certain period of time after having filed a

1 staff complaint.

2 Defendants are still considering problems identified by Plaintiffs' counsel regarding
 3 the issuance of counseling-only chronos which provide no due process but can have
 4 negative consequences. Defendants also agreed to discuss with Plaintiffs' counsel the
 5 inappropriate use of dismissed and voided RVRs, which are currently relied on in risk
 6 assessments conducted during the Board of Parole Hearings process, and the related
 7 problem of which CDCR staff have access to view voided and dismissed RVRs that are
 8 retained in electronic SOMS files.

9 Plaintiffs are hopeful that the parties can agree to resolve problems and that
 10 additional court intervention will not be necessary.

11 **2. Defendants' Statement**

12 **a. RJD and Five Prisons Orders**

13 In compliance with the Court's September 8, 2020, and March 11, 2021 orders,
 14 Defendants have, along with Plaintiffs and the Court Expert, developed comprehensive
 15 and effective remedial plans that the parties filed with the Court on March 21, 2022. ECF
 16 No. 3393. As the Court has noted, “[t]hese agreed-upon measures constitute substantial
 17 improvements that will go a long way to bringing Defendants into compliance with the
 18 ARP and ADA at the six prisons.” ECF No. 3356 at p. 2. Further, the Court found, the
 19 “implementation of these [] remedial measures is likely to have a positive impact on...the
 20 overall reliability of the outcomes of investigations,” of staff-misconduct allegations.” *Id.*,
 21 at p. 15. As previously reported to the Court, within months of the Court’s orders,
 22 Defendants executed significant components of the remedial plans that included increased
 23 staffing to specifically address disability-related issues of class members, body-worn-
 24 camera deployment, fixed camera installation (AVSS), document production, training, and
 25 other remedies. ECF Nos. 3177, 3183, 3412. Moreover, although not required by the
 26 Court’s orders, Defendants have deployed statewide the processes that restructure CDCR’s
 27 staff misconduct allegation, screening, referral, investigative, and disciplinary processes.
 28 Accordingly, further enforcement orders as to other institutions is not necessary.

1 The statewide deployment of the new staff misconduct investigation and staff
 2 discipline processes necessitates extensive resources that includes the hiring and training
 3 of new staff and the development of technological tools. Plaintiffs' concerns related to the
 4 number of complaints routed through the new staff misconduct process are well taken, but
 5 such concerns are not entirely addressed by increasing monetary resources. Rather, hiring,
 6 training, and retaining qualified staff is more challenging in today's environment.
 7 Notwithstanding the current circumstances, CDCR is committed to staffing current
 8 allocated positions to ensure successful deployment of the new processes.

9 Defendants disagree with Plaintiffs' characterization of the revised process as a
 10 recategorization of certain allegations. Instead, Defendants believe that the process can be
 11 improved, in part, by providing additional training to the initial screeners so that these
 12 screeners have an improved understanding of what amounts to serious staff misconduct to
 13 ensure consistent application of the new process and these revisions seek to achieve that
 14 objective. The revisions to the regulations are intended to further ensure success of these
 15 processes by efficiently routing all staff misconduct complaints to the most appropriate
 16 entity for investigation. Defendants have collected and shared data to support Defendants'
 17 proposed revisions to the regulations. Defendants will continue to evaluate all information
 18 received to monitor compliance with the Court's orders and to provide adequate resources
 19 to ensure the successful transition to these new processes. Notwithstanding Plaintiffs'
 20 concerns and objections related to the recent revisions to the staff-misconduct processes,
 21 CDCR's staff-misconduct investigations and discipline processes are in compliance with
 22 this Court's orders applicable to the six prisons. CDCR has dramatically overhauled its
 23 processes to ensure unbiased and complete investigations statewide for the six prisons and
 24 will continue to work to expand it to the remaining institutions voluntarily as they are able
 25 to do so. Defendants anticipate that by the end of next month, investigations will be timely
 26 completed so that there are no cases assigned to custody supervisors over 120 days or to
 27 Special Agents over 180 days.

28 In accordance with the Court's November 8, 2021 order, the Court Expert filed his

1 Report Regarding Treatment of People with Disabilities at Substance Abuse Treatment
 2 Facility (SATF) on December 20, 2022. *See* ECF Nos. 3391, 3446. Following a
 3 stipulation between the parties, the Court has set a briefing schedule with Defendants'
 4 response due on January 24, 2023, Plaintiffs' response due on February 7, 2023, and
 5 Defendants' reply due on February 14, 2023. *See* ECF No. 3448. Although some of the
 6 issues addressed by the Court Expert in his report are referenced in this statement,
 7 Defendants will provide their detailed response to the report on January 24, 2023.

8 **b. Defendants' Response to Demands for RVR Reform**

9 As detailed above by Plaintiffs, Defendants have made significant progress and
 10 commitments to address Plaintiffs' allegations that "CDCR has failed to address the
 11 endemic use of false and retaliatory Rules Violations Reports." Defendants have
 12 committed to revising the Chief Disciplinary Officer and the Senior Hearing Officer
 13 trainings, to implement a headquarters-level audit of RVRs at ten institutions, to audio
 14 record serious RVR hearings for internal auditing purposes, revisions to the Department
 15 Operations Manual, a memorandum addressing discriminatory RVRs, a new screening
 16 process to determine whether a physical disability contributed to the underlying conduct,
 17 the development of Early Warning System (EWS) red flags, and other remedial measures.
 18 All three categories identified by Plaintiffs, above, have been completed and incorporated
 19 into the EWS (so long as the incarcerated person who receives the RVR within a certain
 20 period of time alleges in his grievance that the RVR was received in response to a staff
 21 complaint). Defendants detailed in a past Joint Case Status Statement, that recent
 22 developments will effectively address most of Plaintiffs' concerns related to the RVR
 23 process. *See* ECF No. 3412 at pp. 14-16. This includes the statewide deployment of the
 24 new staff misconduct investigation and discipline processes and the new pepper-spray
 25 policy, Defendants' commitment to deploy fixed-camera technology at fourteen
 26 institutions in addition to the Court-ordered deployment of such technology at six
 27 institutions (20 institutions total), and Defendants' commitment to deploy BWC
 28 technology at four institutions in addition to the Court-ordered deployment of such

1 technology at six institutions (10 institutions total). Further, under the new staff
 2 misconduct process, allegations of false and retaliatory RVRs will be subject to an
 3 investigation by the Office of Internal Affairs. Defendants disagree with Plaintiffs'
 4 contention that the counseling-only chronos implicate a liberty interest necessitating due
 5 process because, in part, inmates receive a copy of the counseling-only chrono and may
 6 contest such chronos in the grievance process. Notwithstanding the significant progress
 7 made, there remains some disagreement between the parties. Nevertheless, Defendants
 8 have agreed to continue discussions with Plaintiffs, along with the Court Expert, to further
 9 address Plaintiffs' concerns related to the RVR process and CDCR's extensive proposed
 10 revisions.

11 **C. Accommodations for Deaf and Hard-of-Hearing Class Members**

12 **1. Plaintiffs' Statement**

13 The parties continue to meet in a workgroup to address the provision of
 14 accommodations for deaf and hard of hearing class members. While progress has been
 15 made in some areas, there are significant, longstanding issues that result in the denial of
 16 equal access to prison programs and services for people with disabilities.

17 The Court expert has twice met with the parties, on December 5, 2022 and January
 18 6, 2023, to discuss Defendants' longstanding refusal to provide real-time captioning⁴ for
 19 deaf and hard of hearing individuals who do not use sign language. Initially, Defendants
 20 proposed providing captions solely via error-prone automated captioning software
 21 designed to for use during video calls (Microsoft Teams), and solely in due process and
 22 educational settings. The parties appear to be making progress, although there are still
 23 outstanding questions and disputes regarding: (1) the captioning service Defendants
 24

25 ⁴ "Real-time captioning (also known as computer-assisted real-time transcription, or
 26 CART), is a service ... in which a transcriber types what is being said at a meeting or
 27 event into a computer that projects the words onto a screen. This service, which can be
 provided on-site or remotely, is particularly useful for people who are deaf or have hearing
 loss but do not use sign language." U.S. Dep't of Justice, ADA Requirements: Effective
 28 Communication (Jan. 2014), <https://www.ada.gov/effectivecomm.htm>.

1 ultimately will provide; (2) the class members who will be eligible to receive it; and (3) the
 2 prisons and settings where Defendants will provide the service. The dispute remains active
 3 until these questions are resolved. Defendants appear receptive to Plaintiffs' concerns.

4 Plaintiffs' counsel dispute Defendants' representation that they "have identified all
 5 class members who may reasonably require" real-time captioning simply by identifying all
 6 class members who are deaf and do not know sign language. Plaintiffs' counsel has
 7 repeatedly reported that many class members who are hard of hearing (able to understand
 8 speech in some settings, with or without visual support) require real-time captioning in
 9 group settings. Defendants' proof of concept reinforces this point. At San Quentin,
 10 Defendants collected surveys from 21 class members who participated in the proof of
 11 concept, all of whom have DNH codes, indicating they are hard of hearing but not deaf.
 12 Seventeen of these DNH class members answered "yes" to the question "did real-time
 13 captions work better for you than solely relying on staff speaking loudly?" Eighteen of
 14 these DNH class members answered "yes" to the question "do you prefer real-time
 15 captions as a method of communication during committee and/or RVR hearings?"
 16 Plaintiffs' counsel is optimistic that Defendants will reconsider their unnecessarily
 17 restrictive position and offer captions to, at a minimum, all deaf and hard of hearing class
 18 members with a visual method (written notes or lip-reading) documented as their primary
 19 or secondary method of communication.

20 Plaintiffs' counsel also remain concerned about the poor quality of the hearing aids
 21 that Defendants provide, which impairs deaf and hard of hearing class members' access to
 22 prison programs, services and activities. When reviewing Defendants' existing hearing aid
 23 contracts, set to expire in January 2023, Plaintiffs' counsel learned that the contracts
 24 contain *no specifications whatsoever* for hearing aids—not even to require FDA-approved
 25 devices. We are further concerned by the lack of meaningful progress on this issue.
 26 CCHCS has merely "agreed to hire" or "is in the process of retaining" specialists and
 27 consultants regarding pocket talkers and hearing aids, despite receiving our expert report
 28 six months ago, and despite repeatedly discussing Plaintiffs' counsel's concerns regarding

1 hearing aid quality in the work group over a period of years.

2 **2. Defendants' Statement**

3 Defendants remain committed to providing class members equal access to
4 programs, services, and activities in accordance with the ADA and will continue to meet
5 with Plaintiffs to discuss the issues that pertain to their clients as part of the parties'
6 ongoing workgroups.

7 Defendants met with Plaintiffs on December 5, 2022 and, later, facilitated a
8 December 7, 2022 meeting between the Court Expert and a member of CDCR's executive
9 staff to further discuss the class members for whom Plaintiffs have requested CART
10 services. The parties, along with the Court Expert, met again on January 6, 2023, and
11 further progress was made concerning this issues. A meeting is scheduled for January 18,
12 2023 to provide further updates. CDCR is currently seeking subject-matter experts to
13 provide information for the development of a concrete plan to supplement current policy
14 and ensure access to prison programs, services, and activities for deaf class members who
15 do not know sign language. Meanwhile, Defendants disagree with Plaintiffs' description
16 of the class-member group requiring such an accommodation. Defendants have identified
17 all class members who may reasonably require such an accommodation and are developing
18 a policy that includes instructing the field that due-process events must include real-time
19 captioning as an accommodation for these class members. Further, the assigned ADAC, or
20 designee, has contacted each class member to confirm upcoming events that may
21 necessitate such an accommodation to ensure access and coordinate with staff to provide
22 reasonable accommodations. The size of this population consists of less than fifty class
23 members who have equal access to a variety of other services or devices that accommodate
24 their needs in different settings and will be incorporated into to any future plan. For
25 example, teachers use electronic interactive whiteboards to engage all students in learning
26 and to provide written content. Although not yet fully rolled-out, every class member
27 participating in the education programs has (or will receive) a laptop for use both inside
28 and outside of the classroom. Additionally, these class members have tablets (or will soon

1 have), TDD/TYY,⁵ video phones, and other means of disability accommodation.
 2 Defendants will continue to work with Plaintiffs on this issue, along with the assistance of
 3 the Court Expert, to resolve this issue.

4 As previously reported, CCHCS has provided Plaintiffs with detailed information
 5 related to the types of hearing aids available to class members. *See ECF No. 3412 at pp.*
 6 17, 18, ECF No. 3422 at p. 13. Nevertheless, CCHCS has internally reviewed Plaintiffs'
 7 retained audiologist's July 13 report, will continue to confer with Plaintiffs, and share
 8 information with them until these issues are resolved. Similarly, Defendants will continue
 9 to confer with Plaintiffs concerning the proposed pocket-talker memorandum that provides
 10 for, in part, a case-by-case analysis of class-member needs. CCHCS reports that it is in the
 11 process of retaining a specialist to provide insight on the subject who will assist parties in
 12 determining the approach to pocket talkers, and other personal sound amplification devices
 13 statewide. *See ECF No. 3412 at p. 18.* CCHCS has agreed to hire a hearing consultant to
 14 look at the current hearing aids, review the reports by Plaintiffs provide feedback, and
 15 anticipate entering a new contract for hearing aids, once the current contract expires, that
 16 adequately addresses the needs of class members. CCHCS disagrees with Plaintiffs'
 17 characterization that there has not been "meaningful process on this issue" because it fails
 18 to acknowledge that CCHCS must comply with the state's vetting process that involves
 19 legal and procurement components. CCHCS has, in fact, complete many aspects of this
 20 required process and is making progress on this issue.

21 **D. Accommodations for Blind and Low-Vision Class Members**

22 **1. Plaintiffs' Statement**

23 The parties formed a workgroup to address issues facing blind and low-vision class
 24 members. The workgroup covers, among other things, reading and writing
 25 accommodations, orientation and mobility training for blind and low-vision class
 26 members, accommodations assessments and skills training, braille literacy, availability of
 27

28 ⁵ Telecommunications Device for the Deaf/TeleTYewriter

1 white canes, accessibility of the tablet program (including training), and photophobia
 2 accommodations.

3 Plaintiffs sent a December 10, 2021 demand letter regarding the need for a
 4 statewide system for identifying, documenting, and providing reading and writing
 5 accommodations for blind and low-vision class members. As Plaintiffs explained in the
 6 demand letter, Defendants must (1) identify, track, and produce the accessible formats of
 7 written materials (such as large print, braille, and audio) that blind and low-vision class
 8 members need to read and write (a statewide request first made by letter on March 15,
 9 2021) and (2) make auxiliary aids for reading and writing—such as electronic video
 10 magnifiers—available to these class members outside restricted locations and hours.

11 Defendants have indicated that they are developing a plan to identify and track the
 12 accessible formats needs of blind and low-vision class members. But over a year and a half
 13 after Plaintiffs raised this issue in March 2021 with Defendants, Defendants have still not
 14 provided Plaintiffs with a draft of such a plan, nor have Defendants provided a plan for
 15 how they will *produce* printed information in accessible formats to blind and low-vision
 16 class members. Moreover, Defendants' proposed plans, discussed in Defendants'
 17 statement, would omit low-vision DNV class members from identification and tracking,
 18 and would fail to make electronic magnifiers available in housing units at non-DPV-
 19 designated prisons where many DNV class members live.

20 On September 22, 2022, Plaintiffs submitted a proposed stipulation to Defendants
 21 to resolve disputes between the parties regarding the need for reading and writing
 22 accommodations for blind and low-vision class members. On November 3 and December
 23 5, 2022, the parties met with the Court Expert to discuss the proposed stipulation.
 24 Plaintiffs are hopeful that Defendants will promptly develop a plan for remedying these
 25 longstanding ADA violations, and that litigation will not be necessary. The parties
 26 continue to meet and confer to discuss these issues.

27 The parties continue to meet to resolve accessibility problems for blind and low-
 28 vision users of CDCR's new ViaPath tablets. Unfortunately, Defendants did not accept

1 Plaintiffs' repeated requests in the summer of 2021, prior to the distribution of these
 2 tablets, to develop a robust training program for class members on the use of the tablets.
 3 However, Plaintiffs are encouraged that Defendants have recognized problems with the
 4 tablets' accessibility features and the available training on how to use these features, and
 5 are developing a plan to resolve these issues. Both CDCR and BPH have testified that key
 6 CDCR and BPH forms, form responses, and other documents are not available on the
 7 tablets, so at least in its current form, Defendants' tablet program does not solve the
 8 accessibility barriers that blind and low-vision class members face regarding access to
 9 essential forms.

10 Plaintiffs have reported that during and after a CDCR IT software change in the
 11 summer of 2022, blind and low-vision class members who could previously type on and
 12 print from library computers, as a disability accommodation, have been unable to do so.
 13 Without a reasonable writing accommodation, these class members do not have access to
 14 programs, services, and activities that require them to produce written documents, because
 15 they are unable to write by hand, or are substantially limited in doing so. Plaintiffs have
 16 requested that Defendants develop a statewide system allowing computer and printing
 17 access for class members who are unable to write by hand or are substantially limited in
 18 doing so.

19 **2. Defendants' Statement**

20 Defendants continuously work to accommodate the needs of blind and low-vision
 21 class members in all areas including their reading and writing needs, have collaborated
 22 with Plaintiffs and the Court Expert, and have made significant progress to resolve
 23 disputes between the parties to ensure class-member access and mitigate associated
 24 litigation risks. Most recently, these efforts include a proposed stipulation addressing
 25 reading and writing accommodations that Defendants received from Plaintiffs. Defendants
 26 are currently engaged in internal discussion concerning the issues raised by Plaintiffs about
 27 Defendants' edits to the proposed stipulation at recent conferences with Plaintiffs and the
 28 Court Expert.

1 As previously reported, Defendants are reviewing different processes by which they
2 can identify, track, and accommodate blind and low-vision class members during intake of
3 inmates into the correctional system by including additional fields in the Strategic
4 Offender Management System (SOMS) to identify class-members who require reading and
5 writing accommodations in large-print with the use of a magnifier, or braille, and provide a
6 means to track class member needs while in Defendants' custody. *See ECF No. 3422 at p.*
7 16. Such a process necessitates coordination with CCHCS and Defendants have been
8 collaborating with CCHCS to develop a successful process to identify, track, and
9 accommodate class members. These proposed new processes would also be accomplished
10 through the 1824 process or triggered when an inmate is designated as DPV while in
11 custody. Defendants continue to explore a variety of options to provide large-print and
12 braille versions of written materials including contracting with third-party vendors and
13 improving institution resources.

14 The Office of Correctional Education is in the process of ordering additional
15 assistive devices, including the Da Vinci Pro and Amigo magnifiers, for education
16 programs at DPV-designated institutions. Moreover, CDCR intends to deploy a 90-day
17 pilot in-cell check-out use of text-to-speech auxiliary aids at CMF to address class
18 members' access to audio formats. And CDCR is developing a policy to permit electronic
19 handheld magnifiers in housing units at DPV-designated institutions. Further, Defendants
20 are deploying its tablet program statewide for all inmates as part of a \$1 billion dollar
21 contract with ViaPath, a third-party vendor who is contractually obligated to apply all
22 accessibility standards to any documentation posted to or provided on the tablet, so
23 anything created for the tablet must be developed with accessibility in place to serve class
24 members. *See ECF No. 3422 at p. 17.* These tablets include a variety of assistive features
25 including, but not limited to, text enlargement, video calling, and text to speech. CDCR
26 took input from Plaintiffs and shared their comments with the contractor and continues to
27 work with the contractor to enhance capabilities to include increased recreational options,
28 different formats for imparting information, and more to enable independent use by blind

1 and low-vision class members. ViaPath is to offer additional accessibility training to the
 2 *Armstrong* class members at the institutions where tablets have been rolled out including
 3 SATF, MCSP, SAC, HDSP, KVSP, ISP, CVSP, VSP, CCWF, CIW, and SOL. This
 4 training will include accessibility training, functionality, settings, use, an opportunity for
 5 questions and answers, individual assistance, and other forms of training to ensure class-
 6 member accessibility. The “IT change” referred to by Plaintiffs was an upgrade to
 7 improve functionality and program access by consolidating all inmate computers to one
 8 network instead of the prior standalone model. Finally, EIS continues to work on a
 9 process to permit inmates to save their items to an internet server (“the cloud”) for printing
 10 at a later time.

11 **E. Problems Regarding Access to Assignments for Class Members**

12 The program-access workgroup continues to meet to discuss credit earning, the
 13 assignment process under Proposition 57, and disparities in the program-access assignment
 14 data in response to Plaintiffs’ allegations of disability-related discrimination. *See* ECF
 15 No. 2680 at pp. 13-14. Defendants produce comprehensive program access data every
 16 month and the parties are attempting to develop a standard for analyzing program access
 17 disparities. Plaintiffs believe that the data continues to show troubling disparities in
 18 assignments for people with disabilities, particularly in the areas of high value Prison
 19 Industries Authority jobs, and in assignments with higher pay. *See* ECF No. 3369, Ex. H
 20 (November 12, 2021, Letter from Tom Nolan to Katie Riley and Dawn Lorey).
 21 Defendants, however, disagree with Plaintiffs’ assessment but have agreed to continue to
 22 participate in future discussions. The parties met most recently on December 15, 2022,
 23 2022, and will travel to Mule Creek State Prison together at the end of March 2023 to
 24 interview staff members there about issues relevant to program access for *Armstrong* class
 25 members.

26

27

28

1 **F. Statewide Durable Medical Equipment Reconciliation and Accuracy of**
 2 **Disability Tracking Information**

3 **1. Plaintiffs' Statement**

4 Following Defendants' statewide durable medical equipment ("DME") reconciliation
 5 in early January 2019 that revealed 7,346 class members were missing one or more
 6 items of DME and that 2,349 class members' DME records had errors, CCHCS imple-
 7 mented the DME Discrepancy Report Tool in January 2020. Defendants had agreed to a
 8 process to ensure reconciliation of what records indicate a class member should have and
 9 what they actually have. Unfortunately, during the most recent meetings on this issue,
 10 including the September 16, 2022 and November 17, 2022 All Parties Meet and Confers,
 11 Defendants reported that they were going back on their plan to ensure that class members
 12 are seen annually by medical staff for reconciliation and instead planned to encourage
 13 class members to self-advocate if they are missing required DME. Defendants also plan to
 14 have the Field Training Sergeants audit this issue, but those positions exist in fewer than
 15 half the prisons. Unfortunately, as was shown by Defendants' audits, relying on class
 16 members to self-advocate is not enough. Class members continue to face retaliation for
 17 asking for disability-related help. Further, the fact that some class members are seen by
 18 health care staff multiple times over the course of a year will not resolve problems for
 19 some class members who are not seen or whose issues do not get addressed when they
 20 meet with busy medical staff about other issues. Also, Defendants found thousands of
 21 class members without needed DME despite the fact that some class members are seen
 22 regularly by health care staff. A dedicated process for ensuring that staff reconcile DME –
 23 even if only for people who are not already seen by health care staff -- is necessary to
 24 prevent widespread problems. Defendants and CCHCS do seem to be moving towards a
 25 model where class members might be able to obtain some of the most common
 26 accommodations without medical staff intervention, similar to how people obtain common
 27 assistive devices in the community. Plaintiffs agree with exploring this approach,
 28 however, there will still be people who need specialized DME that must be ordered by

1 medical. While we appreciate the work of the Field Training Sergeants, the Sergeants'
 2 work at the six prisons where they are in place does not render DME reconciliation
 3 unnecessary. That is especially true because Field Training Sergeants do not exist at 22
 4 other CDCR prisons that are without those court-ordered positions.

5 Relatedly, Defendants acknowledged problems with identification of some class
 6 members who utilize DME but who have not been assigned any disability code.
 7 Defendants reported that they have identified 535 new class members by screening for
 8 such cases and identifying people who had medical equipment but did not have any
 9 accompanying DPP code. Plaintiffs are encouraged by this effort, but would like more
 10 information about how the screening was done, and whether there will be routine screening
 11 of this type for missing DPP codes in the future. We would like Defendants to show us
 12 how they do this reconciliation. Defendants provided some information about this at the
 13 September 16, 2022 and November 17, 2022 meet and confers. Plaintiffs' counsel
 14 previously provided comments on Defendants' proposed reconciliation rules on May 23,
 15 2022 and will provide additional feedback on any new information Defendants provide.

16 Unfortunately, Defendants' disability tracking system also fails to identify and track
 17 class members with upper-extremity disabilities. Plaintiffs requested that Defendants
 18 create a new disability code for this population. *See* ECF No. 3322 at Exs. G and H.
 19 CCHCS does have a system to identify upper-extremity disabilities, and, on September 28,
 20 2021, shared a report with Plaintiffs that showed all patients with upper-extremity
 21 disabilities and accommodations. This list contains thousands of names, so it is difficult to
 22 understand exactly how it functions as a tool for staff to identify who requires what
 23 accommodations. Plaintiffs' counsel continues to share with Defendants reports of failures
 24 to accommodate class members as well as statements from CDCR staff who require
 25 assistance in properly identifying who must be accommodated. Plaintiffs are committed to
 26 resolving this ongoing problem.

27 **2. Defendants' Statement**

28 Collaboration between the parties continues to develop a sustainable DME

1 accountability process. But Plaintiffs' statement that CCHCS is "going back on their plan
 2 to ensure that class members are seen annually by medical staff for reconciliation and
 3 instead planned to encourage class members to self-advocate if they are missing required
 4 DME," is a misleading mischaracterization that fails to recognize the frequency class
 5 members meet with medical staff members—a median of 12 times per year. Following
 6 several conferences with Plaintiffs and after researching how often class members are seen
 7 by their primary clinicians and nursing, it was determined there is ample opportunity for
 8 class members to discuss concerns related to missing or broken DME with medical staff.
 9 Additionally, CCHCS is pulling a list of patients who have not seen a healthcare provider
 10 in the last year to address the concerns raised by Plaintiffs.

11 In response to Plaintiffs' request for reconciliation information, CCHCS performs
 12 its reconciliation by a two set parameter in which Corrections Services reports identified
 13 patients are those without a Disability Placement Program (DPP) code and has an active
 14 order for select durable medical equipment. The DME items reviewed are those assigned
 15 as permanent Canes, Crutches, Hearing Aids, Prosthetic Lower Limb, Walkers,
 16 Wheelchairs, Hearing/Mobility/Vision Impaired Disability Vests. Corrections Services
 17 continues to work on an automated report and to ensure validation of this report.

18 Further, at seven institutions (RJD, CIW, LAC, COR, KVSP, SATF and SAC),
 19 Field Training Sergeants (FTS) on both second and third watch ask class members about
 20 their DME. Specifically, they ask if the class member is in possession of their DME and if
 21 they can retain their DME regardless of their housing location. Sergeants also ask staff
 22 members to determine if they are knowledgeable about the DME process. Effective
 23 September 12, 2022, additional Sergeants were deployed to SVSP, CHCF, CCWF and
 24 CMF. DAI and CCHCS continue to work on educating the population on what to do if
 25 they have missing or broken DME. A one-time annual appointment will not remedy the
 26 concerns addressed by Plaintiffs. For example, the day after an annual appointment the
 27 DME may go missing and patients will be expected to independently address via the
 28 processes outline above.

1 CCHCS and CDCR agree that individuals with upper-extremity disabilities that
 2 limit a major life activity require accommodation under the ADA, but disagree that
 3 CCHCS and CDCR must create a new Disability Placement Program (DPP) code. Inmates
 4 who require any accommodation under the ADA shall be accommodated, whether they
 5 have a DPP code or not, as recently reiterated in an October 28, 2022 memorandum to the
 6 field. Staff rely on the SOMS, “CHSS035C-DPP/Accommodation Summary” screen to
 7 identify inmates who require accommodation under the ADA and for any other physical
 8 limitation. Moreover, the 1845/7410 power form in Electronic Health Record System
 9 (EHRS) is linked to SOMS, noting the appropriate accommodation to staff. The addition
 10 of a new DPP code to this system will not provide any enhancements to this process. In
 11 fact, it will deter current efforts into multiple directions and processes, convoluting
 12 established procedure. CDCR and CCHCS continuously revisit the DPP/Accommodation
 13 Summary screen in SOMS/Cerner systems to see if improvements can be made to ensure
 14 all needed accommodations are included. CDCR and CCHCS will continue to meet with
 15 Plaintiffs and the Court Expert to further discuss individuals with upper-extremity
 16 disabilities.

17 **G. Parole Planning and Working with Class Members Preparing for Release**

18 The parties have been negotiating remedial measures to address alleged
 19 discrimination detailed in Plaintiffs' May 4, 2021 letter and supporting class member
 20 declarations. Plaintiffs contend that CDCR fails to ensure that class members are
 21 accommodated on parole and during the transition to parole by not consistently providing
 22 adequate planning for parole, adequate transitional housing, transportation, benefits
 23 application assistance, assistance obtaining identification cards, and other transitional
 24 services that are critical for these individuals to succeed on parole. *See* ECF 2680 at
 25 11-12; ECF 2655 at pp. 11-13. As a result, Plaintiffs contend class members needlessly
 26 struggle to comply with parole conditions, to transition to life outside of prison, and are
 27
 28

1 denied equal access to parole success. *See* ECF 3266, Ex. F.⁶ Although Defendants deny
 2 class member discrimination and disputed Plaintiffs' allegations, Defendants agreed to
 3 participate in extensive negotiations with Plaintiffs to address their demands for reform
 4 that have resulted in substantive changes detailed below and in previously filed Joint Case
 5 Status Statements. *See* ECF Nos. 3369, 3391, 3412.

6 The parties have agreed in principle to revise the portions of the *Armstrong*
 7 Remedial Plan (ARP) to address parole services and incorporate the new policies required
 8 under the ADA or ARP. Since July 1, 2022, the parties have been meeting regularly to
 9 negotiate the changes to the 2006 Parole Section of the ARP.

10 During the parties' negotiations, Defendants have agreed to some promising policy
 11 changes, for example:

12 Parole agents can now provide an audible low battery warning on GPS tracking
 13 devices to accommodate parolees who have difficulty feeling the standard vibrating low
 14 battery warning because of a disability. Defendants will develop related training for parole
 15 agents and agreed to share the proposed training with Plaintiffs for comment.

16 CCHCS will now provide incarcerated people releasing from CDCR with a 60-day
 17 supply of prescription medications, with some minor exceptions, which should ensure
 18 enough medication before they are able to obtain a their California identification cards and
 19 secure Medi-Cal health insurance benefits for future prescriptions.

20 Defendants agreed to add requirements (effective July 1, 2022) that Transitional
 21 Case Management Program (TCMP) benefits workers in the prisons submit benefits⁷
 22 applications—including Supplemental Security Income and Social Security Disability
 23 Income for all incarcerated people at 90 days before their expected release date.
 24 Defendants will track the data regarding when TCMP benefits workers submit the

25
 26 ⁶ Plaintiffs have subsequently shared additional class member declarations with
 27 Defendants that provide further evidence that remedial measures are needed to address
 discrimination against parolees with disabilities.

28 ⁷ These benefits include those provided by Supplemental Security Income, Social Security
 Disability, Veterans Administration, Medi-Cal, and Cal Fresh Food.

1 applications, whether the applications are approved, rejected, or remain pending at the time
 2 of release, or if the TCMP services were refused by the incarcerated person. CCHCS
 3 issued a February 3, 2022 memorandum, “Providing Relevant Health Information for
 4 Benefits Applications,” that clarifies prison health-care providers’ responsibility to provide
 5 accurate and timely medical information to support benefits applications. Plaintiffs
 6 contend that these changes are necessary to timely and accurately complete benefits
 7 applications for class members to ensure consistent health insurance and other benefits
 8 upon release from prison.⁸

9 Defendants also agreed to work with Plaintiffs to ensure that CDCR-funded
 10 transitional housing programs no longer have categorical exclusions for people with
 11 disabilities, have educated contractors on the requirements of the ADA and the ARP using
 12 materials approved by Plaintiffs, have agreed to make 1824-B disability grievance forms
 13 available to class members living in CDCR-funded transitional housing programs, and now
 14 include ADA compliance in their annual inspections. Defendants have also developed a
 15 transportation policy with a goal of ensuring accessible transportation to all parolees
 16 released from prisons. The new transportation policy was scheduled to go into effect on
 17 November 1, 2022, but is now delayed.

18 Defendants agree in principle to include in the ARP the requirement that they have
 19 sufficient DPW-wheelchair-accessible beds in transitional housing placements in every
 20 STOP region, with some conditional exceptions. For example, this not-yet-decided non-
 21 exhaustive list may include people with arson convictions, with certain sex offenses that
 22

23 ⁸ The California Rehabilitation Oversight Board (C-ROB) September 15, 2022 Annual
 24 Report found that 70.4% of the Social Security benefits applications and 77.6% of
 25 Veterans Affairs (VA) benefits applications submitted for releasing individuals in Fiscal
 26 Year 2021-22 were still pending at the time of release. CDCR stated in the C-ROB Annual
 27 Report, the VA and Social Security Administration “have historically taken longer to
 28 process applications due to the need to verify applicant medical or mental health
 disabilities,” which is consistent with Plaintiffs’ position that incarcerated people with
 disabilities are more likely to be harmed by the historic delays in submission of benefits
 applications than people without disabilities. See 2022 Annual C-ROB Report at p. 42 and
 Table 19, available at <https://crob.ca.gov/wp-content/uploads/2022/09/2022-C-ROB-Report.pdf>.

1 limit where they can reside, or with extra-wide wheelchairs that cannot fit into some
 2 program doors that are otherwise ADA compliant. Defendants will however, make every
 3 effort to place these class members in transitional housing as close as possible to their
 4 county of parole.

5 Defendants continue to work on a policy to provide a mechanism for DAPO to
 6 replace lost or broken non-customizable DME (*e.g.*, simple wheelchairs and walkers)
 7 during a thirty-day transitional period between release and the commencement of health-
 8 care coverage. Plaintiffs have reviewed and commented on the draft policy. In addition,
 9 Defendants previously represented that they would develop a new statewide policy to
 10 ensure that individuals are released with all their prescribed DME and prescription
 11 medications, but Plaintiffs were disappointed to learn on September 30, 2022 that
 12 Defendants backtracked from this commitment and no longer plan to create such a policy.
 13 Plaintiffs believe it is critical for Defendants to develop a simple, responsive process and
 14 urge Defendants to reconsider.

15 Defendants are also revising DAPO's policy on providing financial assistance or
 16 other resources to accommodate other immediate needs of parolees with disabilities.
 17 Plaintiffs contend that Defendants' draft revision to this policy provides too much
 18 discretion and too little guidance to parole agents, prohibits parole agents from ever
 19 providing cash assistance for emergency temporary housing, fails to adequately consider
 20 disability-related factors, and significantly reduces the amount of short-term financial
 21 assistance parolees may receive. Plaintiffs contend that this proposed policy change will
 22 disproportionately harm class members because cash assistance for emergency temporary
 23 housing is sometimes the only means to provide accessible transitional housing and timely
 24 benefits application assistance to class members. CDCR received Plaintiffs' comments to
 25 the policy on July 12, 2022, and this policy is currently pending further review with the
 26 stakeholders.

27 Plaintiffs contend certain class members face a greater risk of parole failure because
 28 of their disabilities and that they should be prioritized for housing based on certain

1 disability-related factors. In response, CCHCS will provide an underlying clinical
 2 assessment regarding each parolee's disability and related medical needs that may be
 3 utilized by the Parole Service Associate (PSA) in making referrals for transitional housing
 4 placements. The Quality Management (QM) team at CCHCS have enhanced a pre-parole
 5 report with additional health-care information related to inmates with upcoming parole
 6 dates. CCHCS shared a draft report with Plaintiffs on June 22, 2022, is in the process of
 7 finalizing the report, and will share the report with DAPO and Plaintiffs once completed.
 8 Defendants contend the report will provide more complete disability and DME information
 9 to DAPO, PSAs, STOP, and DRP to assist in placing class members appropriately.
 10 Although Defendants have not agreed to prioritization of class members, Plaintiffs will
 11 continue to work with CCHCS, DAPO and DRP to ensure that these parolees that
 12 Plaintiffs contend will be disproportionately harmed by the lack of transitional housing
 13 because of their disabilities will be prioritized, as Plaintiffs assert they should be, for such
 14 placements. This includes working with DAPO and DRP to develop a policy or directive
 15 governing transitional housing placements, and by working with CCHCS on how to
 16 provide all the relevant information to the PSAs so that they can be informed of class
 17 members' disabilities when making referrals for transitional housing placements.

18 The 2022-23 State Budget includes \$10.6 million in annual funding over the next
 19 three years (or \$31.8 million total) for the Returning Home Well program, which will
 20 reportedly provide post-release housing services for 1,065 at-risk parolees who may be
 21 homeless or housing insecure. Plaintiffs remain concerned that the proposal
 22 underestimates the future housing needs of releasing individuals. Plaintiffs contend that
 23 CDCR is responsible for ensuring that parolees with disabilities are not excluded from the
 24 benefits of parole, and a limited supply of transitional housing placements necessitates
 25 housing-placement decisions to consider if a class member's disability makes them less
 26 likely to succeed on parole without housing than others.

27 The parties continue to discuss Plaintiffs' proposals that parolees' disabilities are
 28 considered when determining the consequences for alleged parole violations. Although

1 disputes remain, Defendants are committed to continue to work with Plaintiffs and to
 2 address their demands for parole-services reform. Further, training related to the
 3 applicable policies and procedures will be provided to address the consideration of a
 4 parolee's disability during the parole-violation process.

5 Finally, Plaintiffs remain concerned about Defendants' failure to timely and
 6 adequately log and investigate allegations of employees' violations of the ADA, ARP, or
 7 Court Orders in this case. Defendants are committed to addressing Plaintiffs' concerns and
 8 will provide additional training to ensure adequate and timely compliance.

9 **H. Joint Monitoring Tool**

10 The parties remain committed to developing a strong and effective joint monitoring
 11 tool. The parties' plan to test the tool at different types of prisons was disrupted by the
 12 COVID-19 pandemic, but in-person tours commenced in 2022 with the March 2022
 13 Valley State Prison tour and have continued at a steady pace throughout this year.

14 The parties have been meeting regularly to improve individual tool questions and
 15 negotiate many outstanding policy issues—such as how to measure and report on whether
 16 discrimination is occurring in the assignment of *Armstrong* class members to programs—
 17 that must be resolved to effectively audit. The parties have yet to come to agreement on a
 18 format for scoring and reporting compliance. The parties will convene small work groups
 19 starting in January 2023, and submitted informal briefing to the Court Expert in December
 20 to address and resolve some of the remaining disputes between the parties.

21 **I. ADA Structural Barriers, Emergency Evacuation Procedures, and Master 22 Planning Process**

23 Construction was halted due to the COVID-19 pandemic but resumed statewide in
 24 June 2020, and any significant issues impacting construction are noted in the Monthly
 25 Construction Report that is provided to Plaintiffs by Defendants' Expert Mike Knowles.
 26 The parties agreed to meet regularly to discuss different institutions and be joined by local
 27 ADA staff with close knowledge of the institutions. The parties also have begun to tour
 28 institutions together to resolve outstanding issues and address Plaintiffs' concerns. The

1 parties addressed *Armstrong* Master Plan (AMP) issues during a tour at LAC on April 29,
 2 2022, and returned to LAC to survey the second half of the prison on November 9, 2022.
 3 The parties also toured the California Medical Facility with Plaintiffs' access expert on
 4 December 16, 2022. The April and November LAC tours included Plaintiffs' access
 5 expert, who will finalize a report on her findings from inspections done during the tour.
 6 Plaintiffs also toured the California Correctional Institution in Tehachapi with their access
 7 expert on July 11, 2022 to review some disputed Disability Program Placement Matrix
 8 issues, and to consider whether there should be minimum architectural/accessibility
 9 standards for showers for DLT and DPM class members. The parties will meet with their
 10 respective experts to discuss minimum standards for accessible showers for these class
 11 members. The parties have also scheduled a tour with experts at VSP for March 2023.
 12 Further, Defendants have shared with Plaintiffs the individual AMP Transition Plan
 13 (Attachment A), for each institution that memorializes, from Defendants' perspective, all
 14 original elements Defendants contend were agreed upon by the parties during settlement
 15 discussions, and all change requests since then, for LAC, SVSP, SOL, SQ, HDSP, SAC,
 16 COR, CMF, and SATF. The original versions of these documents (the Transition Plans
 17 including Attachment A's providing some information about planned construction) were
 18 first shared with Plaintiffs before each initial settlement discussion commencing on
 19 September 5, 2013 (SQ and SAC), October 30, 2014 (CMF and SOL), August 8, 2014
 20 (SVSP), September 16, 2014 (COR), October 9, 2014 (SATF), November 14, 2014 (LAC),
 21 and November 17, 2014 (HDSP), respectively. Later, revised versions of these documents
 22 were sent to Plaintiffs on March 7, 2017 (LAC); May 17, 2017 (SVSP); July 24, 2017
 23 (SOL); September 26, 2017 (SQ); November 9, 2017 (HDSP); April 11, 2018 (SAC);
 24 April 17, 2018 (COR); September 25, 2018 (CMF); and May 28, 2019 (SATF) following
 25 completion of the settlement discussions for each institution. Defendants assert that these
 26 revised documents incorporated negotiated terms from the settlement discussions.
 27 Plaintiffs assert that the parties have never discussed the 2017-2019 documents, which
 28 were not produced to Plaintiffs' counsel until years after informal settlement negotiations,

1 and Plaintiffs do not believe the relevant documents contain sufficient information about
 2 the specifics of planned ADA construction on which to base any agreement. Plaintiffs also
 3 do not agree that these documents capture the final status of those negotiations and note
 4 that these documents do not represent formal agreements. Indeed, Plaintiffs declined to
 5 sign the proposed agreements for these nine prisons when revised documents were sent in
 6 2017, 2018 and 2019 because of concerns about the adequacy of the plans.

7 The parties have fully executed agreements for other institutions including CIW,
 8 RJD, MCSP, WSP, NKSP, PVSP, KVSP, CCWF, and CIM. These agreements were
 9 signed by Plaintiffs, respectively, on August 18, 2016; December 14, 2016; February 6,
 10 2017; August 8, 2017; August 8, 2017; February 22, 2108; and
 11 February 28, 2018. Plaintiffs assert that it is important to note that the new infill facilities
 12 at RJD and MCSP were never toured by Plaintiffs' expert and are not covered by the
 13 signed agreements. Defendants, however, note that neither were the main facilities at RJD
 14 or MCSP toured by Plaintiffs' then-expert, yet Plaintiffs signed off on both of Transition
 15 Plans on December 14, 2016 (RJD) and February 16, 2017 (MCSP). Moreover, the infill
 16 facilities were new construction (and not part of the AMP) and were built to existing ADA
 17 standards. Further, the DPW beds at both infill facilities were included in all AMP bed
 18 inventories that were passed between the parties since they were both activated. While
 19 they were separate projects from the AMP, the new DPW beds were added to the AMP
 20 inventory in the same manner as CHCF. Plaintiffs believe the CHCF beds also need to be
 21 reviewed by the parties since they were not previously part of these agreements, and since
 22 Plaintiffs have learned that many newer beds in health care settings were never inspected
 23 by Defendants' CASp inspectors for ADA compliance.

24 The parties dispute whether Defendants have a sufficient number of emergency
 25 exits that are fully accessible to prisoners with impacting placement mobility and vision
 26 disabilities in units where those individuals are housed. Plaintiffs have reviewed
 27 Defendants' emergency evacuation plans and have serious concerns about whether they
 28 provide the necessary direction to staff to accommodate class members and to ensure their

1 safe evacuation during an emergency. *See* ECF No. 3412, Ex. E. Plaintiffs' accessibility
 2 expert expressed concern about the lack of accessible emergency exits in the housing units
 3 at LAC, where class members are clustered, during the April 29, 2022 and the November
 4 9, 2022 LAC tours. Plaintiffs await a response to their letter addressing the emergency-
 5 exit issues and are hopeful the parties can resolve these disputes.

6 **J. Investigation of County Jails**

7 Plaintiffs continue to assert that a pattern and practice of denying disability accom-
 8 modations to class members exists at multiple jails, but especially the Los Angeles County
 9 Jails. *See* ECF No. 2680 at pp. 22-24; ECF No. 2786 at pp. 26-27; ECF No. 3322 at pp.
 10 25-29 & Exs. I, J, K. Defendants disagree with Plaintiffs' assertions and have been
 11 meeting with county counsel for several counties to improve relations, information
 12 sharing, and ADA compliance at the jails. Unfortunately, Plaintiffs contend, these
 13 conversations alone are not enough, as evidenced by the longstanding failure of Los
 14 Angeles County Jail to implement their policy to allow and provide canes to detainees.
 15 Los Angeles County has informed CDCR that the "pilot" allowing detainees access to
 16 canes within Los Angeles County jails has concluded and a temporary policy allowing
 17 access to canes at all facilities has been implemented pending issuance of the final policy.
 18 CDCR is informed that Los Angeles County jail records currently show that 54 detainees
 19 across seven different facilities have access to canes. A copy of the final policy will be
 20 shared with Plaintiffs' counsel upon issuance. Plaintiffs continue to seek more information
 21 from Defendants.

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Defendants will continue to meet with various county counsel in an effort to ensure compliance with the ADA for *Armstrong* class members housed in county jails.

Respectfully submitted,

DATED: January 17, 2022

ROSEN BIEN GALVAN & GRUNFELD LLP

By: /s/*Penny Godbold*

Penny Godbold

Attorneys for Plaintiffs

DATED: January 17, 2022

ROB BONTA

Attorney General of the State of California

By: /s/Trace O. Maiorino

Trace O. Maiorino

Deputy Attorney General

Attorneys for Defendants

FILER'S ATTESTATION

As required by Local Rule 5-1, I, Penny Godbold, attest that I obtained concurrence in the filing of this document from Deputy Attorney General Trace O. Maiorino, and that I have maintained records to support this concurrence.

DATED: January 17, 2022

/s/Penny Godbold

Penny Godbold